DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

APR - 6 2004

Re: Zubrin
Docket No. 03E-0410

The Honorable Jon Dudas
Acting Under Secretary of Commerce for Intellectual Property and
Director of the United States Patent and Trademark Office
Box Pat. Ext.
P.O. Box 1450
Alexandria, VA 22313-1450

APR - 6 2004

Dear Acting Director Dudas:

This is in regard to the application for patent term extension for U.S. Patent No. 4,826,868 filed by Johnson & Johnson under 35 U.S.C. § 156. The animal drug product claimed by the patent is Zubrin (tepoxalin), which was assigned NADA No. 141-193.

A review of the Food and Drug Administration's official records indicates that this product was subject to a regulatory review period before its commercial marketing or use, as required under 35 U.S.C. § 156(a)(4). Our records also indicate that it represents the first permitted commercial marketing or use of the product, as defined under 35 U.S.C. § 156(f)(1), and interpreted by the courts in *Glaxo Operations UK Ltd. v. Quigg*, 706 F. Supp. 1224 (E.D. Va. 1989), *aff'd*, 894 F. 2d 392 (Fed. Cir. 1990).

The NADA was approved on March 31, 2003, which makes the submission of the patent term extension application on May 29, 2003, timely within the meaning of 35 U.S.C. § 156(d)(1).

Should you conclude that the subject patent is eligible for patent term extension, please advise us accordingly. As required by 35 U.S.C. § 156(d)(2)(A) we will then determine the applicable regulatory review period, publish the determination in the *Federal Register*, and notify you of our determination.

Please let me know if we can be of further assistance.

Sincerely yours,

Jane A. Axelrad

Jane A. Axelrad
Associate Director for Policy
Center for Drug Evaluation and Research

cc: Philip S. Johnson, Esq.
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